Supreme Court, U.S.
FILED
NOV 27 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-719

In The
Supreme Court of the United States
October Term, 1987

PATRICK CURTIS MARTIN,
Appellant,

v

THE GEORGIA DEPARTMENT OF PUBLIC SAFETY, HUGH HARDISON, and D. E. COCHRAN,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

APPELLEES' MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

(1) Whether the Eleventh Amendment divests this Court of jurisdiction to entertain Appellant's claim that Georgia's constitutional provision reserving Georgia's sovereign immunity deprives Appellant of equal protection of the laws by foreclosing a recovery in damages from the State Treasury?

(2) Whether this Court has jurisdiction to consider, by appeal, Appellant's claim that the Georgia Supreme Court erroneously applied 42 U.S.C. § 1983 to the undisputed facts of this case?

(3) Whether Appellant's claims present substantial federal questions for review?

(4) Whether Georgia's paramount interest in fashioning its own law and in protecting its treasury may be overriden by Appellant's desire to maintain a suit for $500,000,000.00 in damages against the Georgia Department of Public Safety and two state employees?

(5) Whether Appellees Hardison and Cochran are entitled to qualified immunity from liability?

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OPINIONS BELOW

The only opinions issued in this case were issued by the Superior Court of Fulton County, Georgia, and by the Supreme Court of Georgia. The opinion of the Supreme Court of Georgia is reported at 257 Ga. 300 (1987). The Order of the Superior Court of Fulton County is unreported. Both opinions are attached to Appellant's Jurisdictional Statement as Appendices.

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JURISDICTION

Appellant invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(2). Appellees submit that the referenced Code section does not grant this Court jurisdiction over this case.

Although there are several issues in the case, for jurisdictional purposes, this appeal may be considered as presenting two issues: (1) an equal protection challenge to Ga. Const. Art. I, Sec. II, Para. IX(a); and (2) whether the Georgia Supreme Court properly applied 42 U.S.C. § 1983 to the facts of the case at bar. 28 U.S.C. § 1257(2) does not grant this Court jurisdiction to consider either issue.

First, with respect to Appellant's equal protection challenge to Ga. Const. Art. I, Sec. II, Para. IX(a), 28 U.S.C. § 1257(2) grants this Court jurisdiction to review, by appeal, cases in which "the validity of a *statute* of any state" is drawn into question under the Constitution, treaties, or laws of the United States and the highest court of a state

has upheld its validity. (Emphasis added). In the instant action, Appellant has not presented, either in the instant appeal or below, any challenge to any state statute. The provision in question is a part of the Georgia Constitution, challenges to which lie outside the grant of jurisdiction set forth in 28 U.S.C. § 1257(2).

The remaining jurisdictional issue, Appellant's contention that the Georgia Supreme Court erroneously applied 42 U.S.C. § 1983 to the facts of the case at bar, is not in any manner, shape, or form a challenge to the validity of a state statute, and 28 U.S.C. § 1257(2) grants no jurisdiction to this Court to hear this issue by way of appeal. Accordingly, Appellees submit that this Court lacks jurisdiction to hear Appellant's appeal.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

In addition to the constitutional and statutory provisions set forth in Appellant's Jurisdictional Statement, Appellees submit that the following provisions are relevant to this case.

United States Constitution, Amendment Eleven:

> The Judicial power to the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Georgia Constitution, Art. I, Sec. II, Para. IX(a), in pertinent part:

> Sovereign immunity extends to the state and all of its departments and agencies . . . . Also the defense of sovereign immunity is waived as to those actions for the recovery of damages for any claim against the state or any of its departments and agencies for which liability insurance protection for such claims has been provided but only to the extent of any liability insurance provided . . . . No waiver of sovereign immunity shall be construed as a waiver of any immunity provided to the state or its departments and agencies by the United States Constitution.

———o———

STATEMENT OF THE CASE

The instant action arises out of a collision between vehicles driven by Appellee Alan Seabolt and Martha A. Collins (Appellant was a passenger in the Collins vehicle).

On November 9, 1984, one Charles Brewer (a Defendant below who is not a party to this appeal) was observed by Appellee D. E. Cochran, a member of the Uniform Division of the Georgia State Patrol, driving in excess of the speed limit on Georgia Highway 400. Appellee Cochran initiated pursuit of Appellee Brewer who, after first slowing briefly, quickly accelerated and attempted to escape.

Appellee Cochran engaged the visible and audible warning devices (blue emergency lights and siren) on his vehicle and followed Appellee Brewer. Appellee Alan Seabolt, a Deputy Sheriff of Lumpkin County (Appellee Alan Seabolt is a Defendant below but is not a party to the instant appeal), heard radio traffic regarding the pursuit and attempted to render assistance (unsolicited) to

Appellee Cochran. While attemping to reach an intersection in order to set up a roadblock to bring the pursuit of Charles Brewer to a successful conclusion, Appellee Alan Seabolt rounded a curve on the highway upon which the vehicle in which Appellant was a passenger was travelling. After rounding the curve, Appellee Alan Seabolt's vehicle went off of the road on the right side of the roadway. Appellee Alan Seabolt retained control at this time, but before he could regain the roadway, his vehicle struck a culvert on the side of the road and the vehicle was thrown into the oncoming lane of traffic.

The events subsequent to this are the only facts in genuine dispute between the parties. Appellant contends that, while out of control, Appellee Alan Seabolt's vehicle struck the vehicle in which Appellant was a passenger, and that the force of the collision drove the Collins vehicle off of the roadway and down an embankment, causing personal injury to Appellant. Appellant has never, however, submitted any evidence to support this contention. Appellee Alan Seabolt contends that, although his vehicle was thrown into the oncoming traffic lane, the vehicle had come to a complete stop when it was struck by the vehicle driven by Ms. Collins, and that the collision between the vehicles was due to Ms. Collins' failure to take proper precautions after observing the vehicle operated by Appellee Seabolt, on which visible and audible warning devices were likewise operational. That contention was supported by the sworn deposition testimony of Appellees Alan Seabolt and Kenneth Seabolt.

The actual pursuit of Charles Brewer by Appellee Cochran was some distance away from the scene of the

collision. Although the estimates of distance varied somewhat, it is undisputed by all of the parties that Ms. Collins (and Appellant) never observed either Charles Brewer or Appellee Cochran during the entire course of the pursuit (similarly, neither Charles Brewer nor Appellee Cochran ever observed the Collins vehicle during the course of the chase). Appellant's Complaint, as amended, seeks $500,000,000.00 in damages for his personal injuries.

Appellees filed motions for summary judgment in the Superior Court of Fulton County after discovery. The Superior Court conducted a hearing on the motions, and thereafter entered an Order granting the motions.

From that Order, Appellant appealed to the Supreme Court of Georgia, which affirmed the Superior Court's entry of summary judgment in favor of all Appellees with respect to the claims asserted pursuant to 42 U.S.C. § 1983, affirmed the grant of summary judgment to Appellee Hardison on Appellant's state law claims, and reversed the grant of summary judgment to Appellees Cochran and the Georgia Department of Public Safety as to Appellant's state law claims. The opinion of the Georgia Supreme Court was issued, in its final form, on July 29, 1987.

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ARGUMENT AND CITATION OF AUTHORITY

A. MOTION TO DISMISS

I. INTRODUCTION

Appellees submit that this Court may properly dismiss this appeal pursuant to Sup. Ct. R. 16.1. Appellees submit that, with respect to portions of the appeal, the

appeal is not within this Court's jurisdiction, and is therefore subject to dismissal. Other portions of the appeal do not present substantial federal questions; still other portions of the appeal should be dismissed, as the judgment below rests upon adequate state grounds, and review by this Court would not be dispositive in this case. These contentions are set forth in more detail *infra*.

II. THIS COURT LACKS JURISDICTION TO CONSIDER THE APPEAL AS TO ALL CLAIMS AGAINST THE GEORGIA DEPARTMENT OF PUBLIC SAFETY AND THE CLAIMS AGAINST APPELLEES HARDISON AND COCHRAN IN THEIR OFFICIAL CAPACITIES.

The Eleventh Amendment to the United States Constitution provides that the federal courts lack subject-matter jurisdiction to hear cases in which the state, its departments, or its agencies are named as defendants. *Alabama v. Pugh*, 438 U.S. 781 (1978). Although actions may be brought against state officials in their official capacities for prospective relief, suits for damages against these officials in their official capacities are barred. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Thus, as the only relief sought in the case at bar is an award of damages, the Eleventh Amendment forecloses the exercise of jurisdiction by this Court over Appellee Georgia Department of Public Safety and Appellees Hardison and Cochran in their official capacities.

Therefore, it is submitted by Appellees that this Court lacks subject-matter jurisdiction to consider and rule upon Appellant's claim that the provision of Georgia's Constitution reserving sovereign immunity to the State of Georgia and its departments and agencies is unconstitutional,

as such would result in the exercise of jurisdiction by the federal courts in a claim for damages against the state and its officials in their official capacities. The Eleventh Amendment clearly forecloses that exercise of jurisdiction.

The defense of sovereign immunity under Georgia law affords a defense only to the state, its departments and agencies, and to individual employees only to the extent they are sued in their official capacities. *Hennessy v. Webb,* 245 Ga. 329, 330 (1980). Thus, in this case, those aspects of Appellant's claim to which Georgia's sovereign immunity operates as a bar are congruent with those claims over which the Eleventh Amendment to the United States Constitution prohibits the exercise of jurisdiction by this Court.

Therefore, it is submitted by Appellees that this Court has no jurisdiction to consider Appellant's contention that Georgia's constitutional sovereign immunity provision violates the United States Constitution, as the Eleventh Amendment to the United States Constitution is a complete bar to the exercise of jurisdiction by this Court to grant the relief sought by Appellant.

III. THIS COURT LACKS JURISDICTION TO CONSIDER APPELLANT'S STATE NEGLIGENCE CLAIMS AGAINST APPELLEES HARDISON AND COCHRAN, AS THOSE JUDGMENTS REST ON AN ADEQUATE NON-FEDERAL BASIS AND PRESENT NO GROUND FOR REVIEW BY THE UNITED STATES SUPREME COURT.

As an initial matter, it should be noted that Appellant's state negligence claim against Appellee Cochran was

remanded for trial by the Georgia Supreme Court. Thus, that claim against Appellee Cochran is not within the scope of the appeal. The Supreme Court upheld the dismissal of Appellant's state negligence claims against Appellee Hardison on purely state-law grounds, and thus that decision likewise presents nothing for this Court to review.

IV. THIS COURT LACKS JURISDICTION TO REVIEW THE GEORGIA SUPREME COURT'S AFFIRMANCE OF THE DISMISSAL OF APPELLANT'S CLAIMS PURSUANT TO 42 U.S.C. § 1983 AGAINST APPELLEES HARDISON AND COCHRAN IN THEIR INDIVIDUAL CAPACITIES.

The only remaining claims presented by Appellant's appeal concern the dismissal of the claims brought pursuant to 42 U.S.C. § 1983 by the Superior Court, and the affirmance of that ruling by the Georgia Supreme Court. It is respectfully submitted by Appellees that this Honorable Court lacks jurisdiction to consider that ruling in the case at bar. A careful review of Appellant's appeal indicates that he invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(2). That statutory provision grants this Court the authority to review, by appeal, a decision from the highest appellate court of a state upholding a state statute which has been challenged pursuant to the United States Constitution, treaties, or laws. That statutory provision does not grant this Court jurisdiction to consider the application of the facts of this case to 42 U.S.C. § 1983. Accordingly, Appellees respectfully urge that this Honorable Court lacks jurisdiction to consider, by appeal, the Georgia Supreme Court's determination that the undis-

puted facts in the case at bar did not establish liability against Appellees in their individual capacities pursuant to 42 U.S.C. § 1983.

V. THE APPEAL FROM THE GEORGIA SUPREME COURT DOES NOT PRESENT SUBSTANTIAL FEDERAL QUESTIONS.

As noted *supra,* Appellant's appeal essentially presents two issues for review by this Court: first, a contention that Georgia's constitutional reservation of sovereign immunity violates Appellant's right to equal protection of the laws; and, second, a contention that the Georgia Supreme Court erroneously applied the undisputed facts in this case to 42 U.S.C. § 1983 in concluding that Appellees were entitled to judgment in their favor on that claim. Appellees submit that neither of those issues presents a substantial federal question for review by this Court, and also request that the Court dismiss the appeal on this ground as well.

In Georgia, the doctrine of sovereign immunity provides that the state, its departments, boards, and agencies, and its officials in their official capacities, are not subject to suit without the express consent of the state, absent the operation of one of three express waiver mechanisms contained in the Constitution. Ga. Const. Art. I, Sec. II, Para. IX; *Martin v. Department of Public Safety,* 257 Ga. 300 (1987).

The doctrine of sovereign immunity arose at English common law, based upon two considerations: first, the legal fiction that "the King can do no wrong"; and, second, from the reality that the King could not be sued in

his own Court, and there was no higher authority which could exercise jurisdiction over the King. *See generally, Nevada v. Hall,* 440 U.S. 410, 415 (1979); Sovereign Immunity in Georgia, 27 Emory L. J. 717 (1978). Georgia incorporated the doctrine of sovereign immunity by virtue of its adoption of the common law of England, by Act of the General Assembly of February 25, 1784. *Crowder v. Department of State Parks,* 228 Ga. 436, 439 (1971).

Georgia's courts consistently followed the rule of sovereign immunity where suit was brought against the state, a department or agency of the state, or against state officials in their official capacities, although there were occasional dissenting opinions criticizing the continued vability of the doctrine. However, Georgia's courts did not abolish the doctrine, consistent with Justice Lumpkin's admonition in *Georgia Military Institute v. Simpson,* 31 Ga. 273 (1860), that any change in the status of sovereign immunity was to be made by the Legislature, not by the courts. As the Georgia Supreme Court recognized in *Roberts v. Barwick,* 187 Ga. 691, 694 (1930), if sovereign immunity did not have the approval of the people of Georgia, the General Assembly, the people's elected representatives, could simply consent to suit against the state. The General Assembly has never, however, done so.

In 1974, the status of sovereign immunity was changed when an Amendment was added to the Georgia Constitution, authorizing the General Assembly to create a State Court of Claims with jurisdiction over certain specified claims. That Amendment expressly reserved sovereign immunity except to the extent of waiver by the Constitution or by other act of the General Assembly. Georgia

Const. 1976, Art. VI, Sec. V, Para. I. The Georgia Supreme Court subsequently ruled that, in light of the constitutional provision, the Court lacked the authority to abrogate or modify the doctrine, which could no longer be modified or abrogated except by constitutional amendment or act of the General Assembly. *Sheley v. Board of Public Education for the City of Savannah*, 233 Ga. 487 (1974).

In 1983, a new Constitution of the State of Georgia was enacted, including therein a specific provision reserving sovereign immunity to the state and all of its departments and agencies. Georgia Const. 1983, Art. I, Sec. II, Para. IX(a). The Amendment provides three mechanisms for waiver of sovereign immunity, but expressly reserves sovereign immunity in all other cases. As the Georgia Supreme Court noted in its decision below, "present public policy has been very clearly expressed by the passage of the . . . constitutional provision." *Martin, supra*, at 301.

Although not mentioned in Appellant's jurisdictional statement, the United States of America possesses a similar immunity, also derived from English common law. The United States may not be sued without giving its consent to the specific suit, unless the United States has previously consented to maintenance of that type of suit against it, Even when the United States consents to suit, the terms of the waiver define the outer limits of the Court's jurisdiction. *United States v. Mottaz*, 476 U.S. —, 90 L.Ed.2d 841, 850 (1986); *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *United States v. Kubrick*, 444 U.S. 111, 117-18 (1979). It would certainly be anomalous for the same immunity of Georgia to violate the United States Constitution when the United States' own sovereign immunity does not do so.

Georgia's own law cloaks it with immunity from suit in its own courts. Suits against Georgia in the federal courts are barred, not by Georgia's own law, but by the Eleventh Amendment to the United States Constitution. Shortly after the adoption of the United States Consitution in 1789, one Chisholm filed suit against the State of Georgia, bringing an action in assumpsit, seeking to recover damages from the State of Georgia. This Court held that Art. III of the United States Constitution extended the judicial power of the United States to allow the federal courts to entertain suits brought by individuals against non-consenting states. *Chisholm v. Georgia*, 2 Dall. 419, 1 L.Ed. 440 (1793). The decision by this Court in *Chisholm* led to what may charitably be described as an uproar. The decision led to "the prompt adoption" of the Eleventh Amendment to the United States Constitution. *Nevada v. Hall*, 440 U.S. 410, 420 (1979). The Eleventh Amendment, like the federal government's sovereign immunity, is more than simply an immunity from suit; the Eleventh Amendment "places explicit limits on the powers of federal courts to entertain suits against a state." *Id.* Indeed, neither the Constitution nor laws of the United States create any right of individuals to sue a state in either federal or state courts. *Palmer v. Ohio*, 248 U.S. 32, 34 (1918).

Accordingly, it is submitted by Appellees that Appellant's contention that Georgia's constitutional provision preserving Georgia's sovereign immunity deprives Appellant of equal protection of the laws presents no substantial federal question for review by this Court. *See, e.g., Huffman v. Kentucky*, 435 U.S. 991 (1978); *Krause v. Ohio*, 409 U.S. 102, *reh. denied*, 410 U.S. 918 (1972).

B. APPELLEES' MOTION TO AFFIRM

I. THE RESERVATION OF SOVEREIGN IMMUNITY BY THE CONSTITUTION OF THE STATE OF GEORGIA IS CONSISTENT WITH THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

As noted by the Georgia Supreme Court in the opinion below, Georgia's constitutional reservation of sovereign immunity is a clearly expressed public policy with the intent to "preserve the protection of the public purse . . . ." *Martin, supra,* at 301. Appellant argues that sovereign immunity "establishes invidious classifications which . . . draw . . . a discriminatory distinction between victims of negligence injured by a private, non-governmental tortfeasor, and those injured by a public, governmental tortfeasor." Jurisdictional Statement, at 7. However, as the decision below makes clear, the "classification" posited by Appellant is not the relevant distinction made by Georgia's sovereign immunity. The Georgia Supreme Court clearly pointed out that the distinction to be made is *not* based upon whether the defendant was a private citizen or public employee; rather, the relevant inquiry is where any funds to satisfy a judgment would be obtained. Even if the defendant is a public employee, if there are insurance funds available to provide compensation for injuries, immunity is waived to the extent of that insurance: it is only the public treasury that is protected by sovereign immunity. *Martin, supra,* at 301.

It should be noted in this case that the sovereign immunity defense raised by the Georgia Department of Public Safety and by Appellees Hardison and Cochran in their official capacities is not a newly created defense. Ap-

pellees have not sought to apply a defense created subsequent to the injury so as to defeat a previously accrued cause of action; rather, as set forth *supra*, sovereign immunity has been a bedrock of Georgia law since Georgia entered the Union. With this in mind, it must be remembered that the State of Georgia has the inherent power and authority to fashion its own rules of tort law pursuant to the Tenth Amendment. The immunity of the state from suit is simply an aspect of Georgia's definition of any potential cause of action. *Martinez v. California*, 444 U.S. 277, 282 n.5 (1980).

Appellant contends that the Georgia Supreme Court was required to review sovereign immunity under a "strict scrutiny" analysis, and that Georgia's sovereign immunity must fall because it neither serves a compelling state interest, nor is it precisely structured as the least drastic means for effecting the state's intent. Jurisdictional Statement, at 8. Appellant mispereceives the appropriate standard of review. As noted *infra*, Appellees submit that this Court lacks jurisdiction to review Appellant's contention in this respect. Alternatively, however, Appellees would submit that the Georgia Supreme Court has properly upheld Georgia's reservation of sovereign immunity in the face of Appellant's challenge. The proper standard of review is not, as Appellant submits, "strict scrutiny"; rather, the proper standard of review is whether there is a rational relationship between Georgia's purpose and the constitutional provision. *Martinez*, *supra*, at 282. Clearly, a reservation of sovereign immunity that operates only when a claim is sought to be enforced against the State Treasury is rationally related to the strong public policy of protecting the public treasury from the depredations of

litigation. Furthermore, of course, Georgia's interest in fashioning its own causes of action and defenses to those causes of action "is paramount to any discernible federal interest . . . ." *Id.* Accordingly, it is clear that Georgia's constitutional reservation of sovereign immunity does not operate to deprive Appellant of the equal protection of the laws.

II. THE COURT NEED NOT RESOLVE THE QUESTIONS PRESENTED IN APPELLANT'S REQUEST FOR REVIEW OF THE GEORGIA SUPREME COURT'S DETERMINATION THAT NO CAUSE OF ACTION AROSE PURSUANT TO 42 U.S.C. § 1983 UNDER THE FACTS OF THIS CASE.

The remaining questions presented by Appellant are merely different aspects of his request that this Court review the conclusion of the Georgia Supreme Court that the undisputed facts in this case did not arise to the level of a constitutional violation and accordingly did not give rise to a cause of action pursuant to 42 U.S.C. § 1983. Appellant asserts that it is important for this Court to review that decision, because "the Supreme Court of Georgia has decided an important question of federal law which has not been, but should be, decided by this Court." Jurisdictional Statement, pp. 10, 16, 22.

Whether or not it is true that this Court should eventually decide these issues, they are not properly before the Court for decision in the case at bar. Appellees Hardison and Cochran have consistently raised, since the amendment of Appellant's complaint to add claims pursuant to 42 U.S.C. § 1983, the defense of qualified immunity. Government officials are shielded from liability under 42 U.S.C.

§ 1983 "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The inquiry is limited to determining whether the defendant's conduct was *objectively* reasonable, measured against "clearly established law." *Id.*

Below, Appellees Hardison and Cochran took the position that Appellant's 42 U.S.C. § 1983 claim did not state a cause of action pursuant to 42 U.S.C. § 1983 and, alternatively, that even if a claim was made out under the statute, that they were entitled to qualified immunity. The Georgia Supreme Court, relying upon *Cannon v. Taylor*, 782 F.2d 947, 950 (11th Cir. 1986), held that Appellant had no claim pursuant to 42 U.S.C. § 1983, and accordingly did not reach the issue of qualified immunity. However, it is clear that, at a minimum, Appellees are entitled to qualified immunity, and this Court therefore need not reach the issue of whether Appellant might, in the absence of that immunity, have a claim.

As noted, in reaching its conclusion that Appellant had no claim pursuant to 42 U.S.C. § 1983, the Georgia Supreme Court relied upon a decision of the Eleventh Circuit Court of Appeals, in which it was held that actions against a policeman acting in the line of duty arising out of unintentional automobile collisions may well state a claim for relief under state law, but do not rise to the level of a constitutional deprivation. As noted *supra*, Appellant contends that this Court should review the decision because it is an important question of federal law not yet decided by this Court. Appellant does *not* contend that any other

of the federal circuit courts of appeal have reached conflicting rulings on the subject which require resolution by this Court. Therefore, it may appropriately be assumed that the other courts of appeal which have had occasion to pass on the issue presented herein have, as has the Eleventh Circuit, concluded that no cause of action arises under 42 U.S.C. § 1983, as no constitutional deprivation has occurred. Thus, as this Court has never ruled upon the issue, and as the courts of appeal, including the Court of Appeal in the Circuit in which the parties to the case at bar reside, have concluded that the actions of Appellees do not constitute violations of constitutional rights, it is clear that Appellees' conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow, supra,* at 818.

Government officials are not required to predict unfailingly the course of the law and future decisions of the courts of our nation. As noted just this past term by this Court, the right allegedly violated by the defendants "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton,* 483 U.S. —, 97 L.Ed.2d 523, 531 (1987). *See also Mitchell v. Forsyth,* 472 U.S. 511, 528 (1985) (officials are immune unless "the law clearly proscribe the actions" taken by the defendants). Thus, it is beyond dispute that the actions of Appellees violated no clearly established rights of Appellant on November 9, 1984, when this incident occurred. Indeed, as Appellant admits in his Jurisdictional Statement, there is no clearly established law providing that Appellees' conduct violated Appellant's rights even as of the date of writing of the Jurisdictional Statement of Appellant and Appellees' Motion to Dismiss or Affirm. The *only* authority which addresses the issue

provides that Appellees' actions did not violate any of Appellant's constitutional rights.

Accordingly, it is submitted by Appellees that the determination of the Georgia Supreme Court should be affirmed on the basis of Appellees' qualified immunity, and that this Court need not go further to render what would be, in reality, merely an advisory opinion on any other issues presented with respect to Appellant's 42 U.S.C. § 1983 claim.

CONCLUSION

Appellees respectfully request that this Honorable Court grant their Motion to Dismiss the Appeal or, in the alternative, that the determination of the Georgia Supreme Court be affirmed without further briefing or argument.

Respectfully submitted,

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